

AMENDMENTS TO THE DRAWINGS WITHOUT MARKINGS

IN THE DRAWING:

Fig. 1 has been amended.

REMARKS

The last Office Action of October 6, 2005 has been carefully considered. Reconsideration of the instant application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 11-31 are pending in the application. Claims 11, 13-15, 21, 24, 30 and 31 have been amended. Claim 32 has been added. Amendments to the specification have been made. The fee of \$50.00 for submitting a further claim in excess of twenty is enclosed.

It is noted that the drawings are objected to because of applicant's failure to show every feature set forth in the claims. A new drawing sheet is submitted and labeled "Replacement Sheet".

It is further noted that claims 11-31 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 11-31 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11-14, 16-20, 22-24 and 27-31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 5,421,688 to Fuchtey in view of U.S. Pat. No. 4,973,219 to Brickner et al.

Claim 15 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Fuchtey in view of Brickner et al., and further in view of U.S. Pat. No. 3,836,020 to Lassig.

OBJECTION TO THE DRAWING

Applicant has made amendments to the FIG. 1 in order to show all elements claimed. More specifically, FIG. 1 has been amended as follows:

a) the telescopic feature of the arm (13) by indicating an inner cylinder that has moved out.

- b) a spreader (8), analog to the spreader or gripper (8) of the first hoist (5). In addition, the holding pins, referred to in paragraph [0023] of the instant specification, have been labeled by reference numeral --8a--.
- c) grippers and spreaders are used interchangeably and are labeled in Fig. 1 by reference numeral --8--.
- d) the vertical axis, set forth in claim 19, is now labeled with reference numeral --a₂--.
- e) the horizontal axis, set forth in claim 20, is now labeled with reference numeral --a₁--.
- f) the center of gravity, set forth in claim 25, is now labeled with reference numeral --12a--.
- g) the sensors, set forth in claims 28, 29, are now labeled with reference character --S-- and --S₁--.

The specification has been amended to make it consistent with the amendments to the drawing. No new matter has been added.

The intermediate storage facility is shown in Fig. 1 and labeled by reference numeral "3". It is believed that the illustration of a single-level intermediate storage facility is well within the understanding of artisan so that a detailed showing is believed to be unnecessary for the understanding of the present invention.

Withdrawal of the objection to the drawing is thus respectfully requested.

REJECTION UNDER 35 U.S.C. §112, FIRST PARAGRAPH

Applicant has amended Fig. 1 and amended the specification accordingly, to address the problems raised by the Examiner. These changes are self-explanatory, so that further discussion is not necessary.

Withdrawal of the rejection of the claims 11-31 under 35 U.S.C. §112, first paragraph is thus respectfully requested.

REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH

Applicant has amended claims 11, 13-15, 21, 24, 30 and 31 to address the §112 rejection. These changes are self-explanatory as a result of the amendments to Fig. 1, and are cosmetic in nature and should not be considered as a narrowing amendment to trigger prosecution history estoppel.

With respect to claim 16, applicant wishes to note that the hoists involved for manipulating the cargo have identical gripper construction. While the subject matter indeed appears to be claiming a structural feature, the method steps relating to the operation of the hoists is further defined.

The misunderstanding of the subject matter of claim 21 is based on a mistranslation of the German word "über", which can be translated with "via" but also has the meaning of "above" which is intended here. Claim 21 merely should set forth that the cargo is transported directly by the first long-distance transportation means to the transfer zone, i.e. above the rails of the second long-distance transportation means.

Withdrawal of the rejection of the claims 11-31 under 35 U.S.C. §112, second paragraph is thus respectfully requested.

REJECTION UNDER 35 U.S.C. §103(a)

The present invention, as set forth in claim 11, is directed to loading and unloading method which involves identification and removal of a cargo from a first transportation means by a first hoist for transfer to a transfer zone from where the cargo is then transported by a second hoist to a predetermined location of an intermediate storage facility. This concludes the unloading process. The loading process for loading the cargo to a second transportation means involves a second hoist which removes the cargo from said predetermined location in the intermediate storage facility for transfer to a predetermined position in the transfer zone, whereby this predetermined location is dependent

on the particular site for depositing the cargo on the second transportation means. Reference is made to paragraph [0008], where it is described that “[T]his predetermined site should already correspond to its position in the freight train”. For reasons of clarity, applicant has amended claim 11 by expressly setting forth the “predetermined location” on the second transportation means. An essential feature of the present invention is thus the provision of an intermediate storage facility in addition to a transfer zone.

The Fuchtey et al. reference describes an apparatus for transferring cargo between road and rail-bound vehicles. Hoists are used to transfer cargos between road and rail-bound vehicles via circulating pallet belts that travel between various roofed sections (roofed sections 22, 21, 20, or 20, 19, 18). For example, unloading of a road vehicle involves the step of transferring the cargo from a road vehicle onto the continuously circulating pallet belt and from there the cargo is transferred by a second hoist onto a rail-bound vehicle. While acknowledging that the Fuchtey et al. reference lacks a disclosure of the cargo identification step and a discrimination between the hoist means as far as loading and unloading operations are concerned, the Examiner fails to recognize the absence of a separate intermediate storage facility in which, according to the present invention, cargo is temporarily stored before being transported to the transfer zone.

The Brickner reference has been applied to merely show the disclosure of an identification step. Thus, a combination of Fuchtey et al and Brickner et al. would not produce the present invention because of the absence of the various transfer steps between transportation means, transfer zones and intermediate storage facility. The Examiner's, while also acknowledging that the prior art fails to disclose each claimed element, he bridges the absence of a teaching or suggestion of claim elements of claim 11 by making a broad conclusion that this is obvious routine. As stated by the Federal Circuit in *In re Lee*, 61 USPQ2d, 1434, 1435, “Common knowledge and common sense, even if assumed to derive from the agency's expertise, do not substitute for authority when the law requires

authority.". Applicant believes that this rejection is improper in the context of the present invention and requests a citation or an Examiner's affidavit that provides such citations.

Please note also that the loading and unloading process according to the present invention is fully automated, without need for human intervention. In Brickner et al, operating personnel is required, see, e.g., operator's cab 50 (Fig. 4).

For the reasons set forth above, it is applicant's contention that neither Fächtey et al. nor Brickner et al, nor a combination thereof teaches or suggests the features of the present invention, as recited in claim 11.

As for the rejection of the retained dependent claims, these claims depend on claim 1, share its presumably allowable features, and therefore it is respectfully submitted that these claims should also be allowed.

It should, however, be noted that these dependent claims contain individual patentable features per se.

The subject matter of claims 13-16 indicates the versatility of the novel and inventive loading and unloading process involved here as a consequence of the arrangement of the separate intermediate storage facility. The horizontal and vertical movements, as set forth in claims 17 and 18 enable a precise depositing of cargo in the intermediate storage facility. The subject matter of claims 19, 20, 22-24 enable short loading times, especially as far as operation of the second hoist is concerned.

Withdrawal of the rejection under 35 U.S.C. §103(a) and allowance of claims 11-32 are thus respectfully requested.

CITED REFERENCES

Applicant has also carefully scrutinized the further cited prior art and finds it without any relevance to the newly submitted claims. It is thus felt that no specific discussion thereof is necessary.

CONCLUSION

Applicant believes that when reconsidering the claims in the light of the above comments, the Examiner will agree that the invention is in no way properly met or anticipated or even suggested by any of the references however they are considered.

In view of the above presented remarks and amendments, it is respectfully submitted that all claims on file should be considered patentably differentiated over the art and should be allowed.

Reconsideration and allowance of the present application are respectfully requested.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully requested that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. If the Examiner feels that it might be helpful in advancing this case by calling the undersigned, applicant would greatly appreciate such a telephone interview.

Respectfully submitted,

By: 

Henry M. Feiereisen
Agent For Applicant
Reg. No: 31,084

Date: February 6, 2006
350 Fifth Avenue
Suite 4714
New York, N.Y. 10118
(212)244-5500
HMF:af